

## The Davis-Bacon Act (DBA) “Booster Shot” for Districts

Below are some reminders/clarifications of the requirements of the Davis-Bacon Act (DBA, codified at 40 U.S.C. §§276a – 276a-7). This information is intended to correct misunderstandings about the correct way to implement DBA and Iowa public bid law requirements for school district projects.

### To what projects does the DBA apply?

- ◆ The DBA applies to any contract in excess of \$2,000 let by a government entity, such as a public school district, for construction where federal funds are used in whole or in part to pay for the construction.

### What is required under the DBA?

- ◆ Laborers and mechanics on a construction project for a school district must be paid – at a minimum – the local prevailing wage and fringe benefits, as determined by the U.S. Department of Labor. There is also a significant paperwork obligation on the part of the contractor for such projects.
- ◆ The school district must make it known to potential bidders in the initial RFP or other bid documents that the project is funded in whole or in part by federal funds, and therefore, that the project is subject to the DBA. If the federal funding is still pending at the time the initial RFP is made available to potential bidders, the initial RFP should state that the project will be subject to DBA if the funding is received.

### What is a “contract for construction?”

- ◆ A contract is covered if it calls for construction, alteration, remodeling, and/or repair, including painting and decorating, of public buildings or public works. (If the school district owns it, it’s covered.) “Construction” also includes the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work by persons employed at the site by the contractor or subcontractor.

### To whom must the “prevailing wage” be paid?

- ◆ The prevailing wage and fringe benefits apply to “every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States. . .” [29 C.F.R. 3.2(e)]. This would include employees of the school district that are hired by the district (contractor) to do work under the grant secured. In other words, *anyone* who performs work on the “site of the work” is covered.

### What is the “site of the work?”

- ◆ The “site of the work” is the physical place or places where the construction remains after work has been completed. However, it also applies to any other site where a significant portion of the building or work is constructed, provided such site is established specifically for the contract. This includes fabrication plants,

mobile factories, batch plants, borrow pits, tool yards, headquarters, etc., IF they are located adjacent or virtually adjacent to the “site of the work” AND they are dedicated exclusively or nearly exclusively to the performance of the contract or project.

Does the DBA apply to the entire project, even if federal funds just pay for a portion of the project?

- ◆ YES. If the project is described in the district’s grant application, the DBA applies to the project. It does not matter that the district provided nonfederal matching dollars. It does not matter that the district can show what components of the project the federal dollars were used for, and which nonfederal dollars were used for. The entire project is covered by the DBA.

Does the DBA apply if a federal grant is received for only part of a project?

- ◆ If (and this is a huge if) the grant application covers only one part of a multi-part construction project, and if that part is separate and discrete from the rest of the project, then and only then do the requirements of the DBA not apply. For the sake of example only, if a district constructs a new wing in a building at the same time as it renovates its library in the same building, but the new wing is a demonstration construction project (funded in part by a federal grant) and the library is paid for solely with state and local funds, the library renovation is not covered by the DBA. However, the district must make sure that both of the following are true:
  - ◆ The library renovation is not mentioned in the grant application for the demonstration construction funds; and
  - ◆ The RFP, bidding documents and contracts for each project are completely separate and independent from each other with each being bid separately.Ideally, these projects would not be occurring at the same time, but we realize that the construction season in Iowa is short.

Does the DBA apply if no federal funds are involved?

- ◆ No. If, for example, a Vision Iowa grant is used for a project, the DBA does not cover the project because these are nonfederal funds.

How is Iowa’s contract and bidding law involved?

- ◆ A district must always comply with Iowa Code chapter 73A, the law regarding public contracts and bidding procedure. The terms in the RFP must be substantially the same as the terms in the awarded contract. If two contracts are ultimately to be signed, the RFP must so state. It would appear to be contrary to the provisions of this law for a district to issue an RFP for a single construction contract and then suggest that or require the winning bidder to sign two separate contracts, one to be covered by the DBA and one not covered, after the contract for the project is awarded. A publicly bid contract cannot be changed after the award. [Apart from the issue of whether this can even be successful under the DBA, this practice is likely a violation of chapter 73A.]

Where can more information be found?

- ◆ The federal Department of Labor has the following web sites that provide more information on the DBA:
  - ◆ <http://www.dol.gov/esa/whd/contracts/dbra.htm>
  - ◆ <http://www.oalj.dol.gov>
  - ◆ <http://www.ArNet.gov/epl> (debarred bidders list)
  - ◆ <http://www.access.gpo.gov>
- ◆ If a district (or contractor) has additional questions, call the local office of the federal Department of Labor, Wage and Hour Division. In Des Moines, that number is **515/284-4625**.